IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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J U D G M E N T

Bhanwar Singh & Anr.
Vs.
State of Rajasthan

S.B. CIMINAL APPEAL NO.168/1988 UNDER SECTION 374 CR.P.C. AGAINST THE JUDGMENT DATED 20.04.1988 PASSED BY THE SESSIONS JUDGE, UDAIPUR.

DATE OF ORDER :: 28th August, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.S.K. Poonia, for the appellant.
Mr.Rameshwar Dave, Public Prosecutor.

BY THE COURT

The present criminal appeal has been filed by accused-appellant Bhanwar Singh and his wife Smt.Sajjan Kanwar against the judgment dated 20.04.1988 passed by the Sessions Judge, Udaipur thereby convicting them for offence under Section 366 IPC and sentencing each of them to undergo rigorous imprisonment of two years and also to pay a fine of Rs.100/- in

default payment whereof to further undergo one month's rigorous imprisonment.

The case of the prosecution is that on 26.05.1985 Bheru Singh son of Shri Kishan Singh lodged a first information report at the police station, Godhan Vilas to the effect that on 22.05.1985 the accused Bhanswar Singh along with his wife Smt. Sajjan Kanwar visited his house. On 23.05.1985 Bhanwar Singh stated that they were going for a movie and would return back in the evening. They requested for their daughters namely Pushpa aged 12 years and Indira aged 6 years to accompany them. Accordingly, both the daughters went in their company but they did not return in the evening, therefore, he proceeded to search them at Udaipur. Pema Dangi informed him that he had seen his two daughters going in a Taxi. He thereafter went to Chundawaton Ki Khedi where they were not available. The house was closed. He thereafter went to Madhari where the accused Bhanswar Singh was in service. He was not available even at Madhari. However, he was informed by Sajjan Singh that he had seen Bhanwar Singh along with two girls in a car proceeding towards Fatehnagar. It was also stated in the first information report that Bhanwar Singh and his wife Smt.Sajjan Kanwar accompanied his daughters to force them to marry against their will. On this information, the police registered a case under

Section 366 and 363 IPC and proceeded with investigation. After usual investigation, the police filed a challan against the accused-persons for the offences under Sections 366 and 363 IPC.

The prosecution examined as many as twelve witnesses in support of their case and exhibited eight documents and the defence also produced six witnesses though did not exhibit any document. The learned trial court on conclusion of the trial convicted and sentenced the accused-appellants as indicated above.

I have heard arguments advanced by Shri S.K. Poonia, learned counsel for the accused-appellants and Shri Rameshwar Dave, learned Public Prosecutor appearing for the State and also perused the record.

Shri S.K. Poonia has assailed the judgment passed by the learned trial court on various grounds. He has argued that the accused-appellants are close relatives of the complainant party and they have been falsely implicated in this case on account of family rivalry. He has argued that the accused-appellant Bhanwar Singh is grand son of ant (Bhua) of the informant Bheru Singh whose two daughters were allegedly kidnapped by

the appellants. He argued that the allegation of abduction of girls by the accused is falsified from various statements of prosecution witnesses including that of informant Bheru Singh. The evidence that has come on record consistently proved that it was informant Bheru Singh who on 23.05.1985 permitted the appellants to take his daughters Pushpa aged 12 years and Indra aged 6 years with them for site seeing and watching movie. He has argued that the accused-appellant No.1 is cousin of the girls and in the evidence it has come that they used to call him by the name "Dada" and accused-appellant No.2 as "Bhabhi". It has been argued that the learned trial court has since recorded the findings of guilt against the appellants contrary to evidence on record. Though the informant Bheru Singh has stated that the appellants wanted to solemnize marriage of his daughter with some one in the village namely Chudawato Ki Khedi, but nothing has been brought on record as to who was the boy with whom marriage was to be solemnized.

The statement of Bhanwar Singh PW-4 in this case is completely lacking in basic details inasmuch as he has not stated as to when and with whom the marriage was arranged to be solemnized. Counsel for the appellants has invited attention of the Court to the statement of PW-8 Manohar Singh who is the investigating officer of the case. He has stated that he had heard

from residents of the village that the accused wanted to solemnize marriage of Pushpa in a clandestine manner. He has also stated that not only the girl Pushpa was made to wear two clothes, the boy "Bridegroom" also put on new clothes. Yet the investigating officer did not name the boy. No efforts were made by the investigating agency to tress out the boy and establish the factum of alleged abduction. He has argued that even though the investigating officer has stated that he made recovery of the girls and also prepared the site plan where from the girls were recovered, yet no such site plan has been produced before the trial court. This raises doubt about the veracity of the prosecution version because PW-11 Chiman Lal in the same manner has stated that the recovery of both the girls was made by the investigating officer Manohar Singh whereas PW-8 Manohar Singh has stated the recovery of one girl but has not indicated as to from where this recovery made.

Learned counsel for the appellant further argued that PW-1 Pushpa stated that the appellant wanted to get her marriage solemnized at village Chudawato Ki Khedi and where she denied to wear clothes and cried. Hearing her hue and cry people assembled there. Pushpa has also stated that she was forcibly taken to the temple of Mataji and she also cried and told about her forcible abduction to the driver of the taxi. None of the

witnesses either from village Chudawato Ki Khedi has been produced to prove that Pushpa was forcibly taken to the temple. It has been argued that PW-9 Pema does not support the allegation of abduction by the appellant. He has stated that the accused-appellants had taken girls in the taxi for 'darshan' of the temple. PW-10 Abhay Singh driver of taxi has merely stated that when in the night they went to the village of the accused-appellants, he heard the discussion of their family regarding marriage of Pushpa and hearing this discussion Pushpa started crying.

Learned counsel therefore has argued that the judgment passed by the learned trial court may be set aside and the accused-appellants may be acquitted of the charges.

On the other hand, learned Public Prosecutor has argued that the charge of abduction under Section 366 Cr.P.C. against the accused-appellants has been proved by the prosecution beyond reasonable doubt. He has referred to statements of various prosecution witnesses in support of the judgment. He has referred to statement of PW-1 Pushpa where she stated that the accused wanted to solemnize her marriage and wanted her to wear new clothes but she refused and started crying. She has stated that the accused forcibly detained them to their village

and took them to other places. Learned Public Prosecutor also referred to the statement of PW-2 Dhopa Bai who has stated that her husband Dharm Singh had permitted accused-appellants to take the girls on the condition that they would be brought by 6 O' Clock in the evening. When they did not turn up even on the second day, her husband went to Madari in their search. The police brought the girls on fourth day. Learned Public Prosecutor also cited the statement of PW-4 Bhanwar Singh, father of the girls who has stated that he permitted the accused-appellants to take his daughters on the condition that they would be brought back to his house by 6 O' clock in the evening. However, the girls did not turn up even on the second day Pema Dangi informed him that he had seen them with accused-appellants in the taxi of Abhay Singh. Learned Public Prosecutor has also referred to the statement of PW-5 Pratap Singh who is nephew of Bhero Singh. Pratap Singh stated that he along with Bheru Singh went to the Madari at the residence of the accused, but it was locked. They then went to the village of the accused at Chudawato Ki Khedi, about 25 people were sitting their, amongst them father of the accused Uday Singh and another person Pratap were also present. Pratap Singh told that accused has already solemnized marriage of Pushpa. Learned Public Prosecutor has also invited my attention to the statement of PW-10 Abhay Singh who was the taxi driver. He has stated that they

went to the village of the accused they stayed there in the night. After they taken dinner, he heard some discussion about marriage of Pushpa. Pushpa thereupon started crying. He further stated that they went to the temple of Mataji and from there they reached to village Chudawato Ki Khedi about 8 PM in the evening. Pushpa was subjected to ossification test and according to test her age was 14 to 15 years. Learned Public Prosecutor therefore argued that judgment passed by the learned trial court is perfectly valid and does not call for interference.

I have examined the arguments of both the learned counsel for the parties and perused the record.

The evidence which has come on record clearly suggest that accused-appellants and the complaint are closely related to each other. The accused-appellant Bhanwar Singh is grand son of sister of complainant Bheru Singh. In other words complainant Bheru Singh is brother of the mother of accused-appellant Bhanwar Singh. It was in the relationship of the mutual trust and faith that Bheru Singh permitted the appellant to take his daughters with him for site seeing and for watching movie. Although at the initial stage when the complainant permitted accused-appellants to take his daughters with them, it was with the consent of the parents that the girls accompanied appellants

to various places. However, the appellant could not bring the girls back to their parents by 6 O' clock and when the girls did not turn up even on the send day, the case was lodged.

It would thus be evident that the girls accompanied the appellant with the consent of their parents and, therefore, it cannot be said that they were forcibly abducted. What is however sought to be proved is that the appellants did not bring the girls back to their parents house. Action of the appellants for not bringing the girls back and detaining them even up to second day was allegedly motivated by appellant is desire to solemnize marriage of Pushpa in the village Chudawato Ki Khedi. PW-1 Pushpa has also stated that accused wanted to solemnized her marriage.

The prosecution in the present case has not produced any person from village Chudawato Ki Khedi to prove as to who was the person with whom appellants wanted to solemnize marriage of Pushpa against her wish. In her statement, Pushpa has stated that she did not know with whom the accused wanted her to marry. The prosecution has also not made any effort to prove the motive of the detention of Pushpa and failed to pin point boy with whom her marriage was fixed and attempted to be solemnized. PW-1 Pushpa has stated that the accused forcibly

took her to the temple of Mataji. While she was being taken to the temple, they halted the taxi enroute at a tea stall. She told people present there that accused were forcibly taking her. In the same breath she stated accused appellant No.2 was all along with her in taxi and closed her mouth. But passer by watched them. Then she again stated that she told driver Abhay Singh that she was being forcibly taken.

PW-2 Dhapu Bai has stated that the police brought the girls on the fourth day, PW-4 has stated that the girls were brought back to the house by police after about a week. PW-4 Manohar Singh has also stated that the intention of the accused-appellant in detaining the girls was to solemnize her marriage with someone. He in his cross-examination has stated that when appellant Bhanwar Singh came to his house, he informed him that Pushpa had already been engaged.

PW-5 Pratap Singh in her statement has alleged that when he along with complainant Bhanwar Singh went to the village Chudawato Ki Khedi at the house of the accused-appellants, they found 20-25 people sitting there including Uday Singh and Pratap Singh. Pratap Singh told him that the accused-appellant had already solemnized marriage of Pushpa. Even then no effort was made by the prosecution to either produce Pratap Singh or Uday

Singh or to tress out the person with whom the marriage was arranged to be solemnized.

PW-8 Manohar Singh investigating officer of the case stated that not only the girl was wore new clothes but the boy had also put on new clothes. He has also stated that at the time of recovery of the girls he prepared the site plan but no site plan has been produced in evidence.

PW-11 Chiman Lal who was a constable and accompanied the investigating officer has stated that they had made recovery of two girls from Dev Magri whereas the investigating officer in his statement has stated about recovery of only one girl.

An analysis of the entire evidence would show that the prosecution has failed to prove intention or motive of the accused for alleged abduction of the girls and has made perfunctory investigation. In my view, the prosecution has not been able to prove the charges of offence under Sections 366 IPC against the accused-appellants beyond reasonable doubt. Most of the statements including that of the PW-1 Pushpa does not inspire confidence as she appears to be exaggerating so also does the other witnesses. Accused and complainant are closely related to each other and evidence on record show that accused

were not happy with the engagement of Pushpa but that by itself would not be sufficient to hold appellants guilty of offence under Section 366 IPC. Clumsy and weak nature of evidence certainly makes the accused entitled to benefit of doubt.

As a result of the aforesaid discussion, the present appeal succeeds and is hereby allowed. conviction of the accused-appellants under Section 366 IPC is set aside. Accordingly, the bail bonds and sureties of the appellants are ordered to be discharged.

[MOHAMMAD RAFIQ],J.

Ashwini/-